

D.C. Circuit, President Bush had a unique opportunity to begin de-escalating the war now raging over judicial nominations. The need for judges in these two slots—the 11th and 12th authorized judgeships—is far from clear, as Republicans argued in blocking the confirmation of qualified Clinton administration nominees. Since then, the court's workload has declined. Additional D.C. Circuit nominations should have awaited a more comprehensive understanding of the court's needs. If two more judges were needed, we had hoped that Mr. Bush would have been mindful of the history and nominated qualified candidates who easily could win Democratic as well as Republican support. Instead, Mr. Bush has nominated two people who will only inflame further politics of confirmation to one of this country's highest-quality courts.

Both nominees—White House counsel Brett M. Kavanaugh and California Supreme Court Justice Janice Rogers Brown—are people of substance, nominees whose records and qualifications might well under other circumstances command support. But these nominations could not be better calculated to pour salt on Democratic wounds. Mr. Kavanaugh is a fine lawyer who could be a fine judge. He also has spent the past few years as, first, a key figure in former independent counsel Kenneth W. Starr's investigation and, more recently, an official in the White House counsel's office working on such politically sensitive matters as judicial nominations and executive privilege. Whatever the merits of his work in these two roles, they are sore spots for Democrats.

Likewise, Justice Brown possesses a serious judicial mind. But she also has a long record of opinions that will provoke liberal anxiety; one, for example, declares in its opening section that "private property, already an endangered species in California, is now entirely extinct in San Francisco." It takes nerve for Mr. Bush to ask Senate Democrats to confirm such people to positions whose very necessity Republican senators were busily questioning until only two years ago.

The White House appears to believe that any accommodation of Democratic concerns would be a sign of weakness in the face of the filibusters and stalling of the president's other nominees. Mr. Bush's grievances are real; the Senate continues to filibuster the nomination of the qualified Miguel A. Estrada, for example, more than two years after his nomination. But both sides in the past several years have behaved badly in the fight over judicial nominations. Their war may help both political parties rally their bases and raise money. But it is deeply harmful, not least to the public perception of judging as an apolitical task. And it will not end until someone extends an olive branch. That someone has to be the president, the only person with the power to do it meaningfully. The D.C. Circuit would have been a great place to start. Too bad Mr. Bush is too busy playing politics to lead.

Mr. LEAHY. Because we have discussed at great length an issue involving one of the judiciary nominees, I ask unanimous consent that a letter from the National Council of Churches addressed to President Bush regarding the debate on Alabama Attorney General William H. Pryor be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL COUNCIL OF CHURCHES,  
July 31, 2003.

President GEORGE W. BUSH,  
*The White House,*  
*Washington, DC.*

DEAR MR. PRESIDENT: As religious leaders from various faith traditions, we are fully committed to religious freedom and separation of church and state as basic tenets of our Constitution. We agree with you that, "we (America) must continue our efforts to uphold justice and tolerance and to oppose prejudice; and we must be resolved to countering any means that infringe on religious freedom." Today, we write to express our grave concern about the attempt to make religion an issue in the consideration of judicial nominees.

We were deeply troubled to learn that during a Senate Judiciary Committee hearing last week on the nomination of Alabama Attorney General William H. Pryor, who is being considered for a lifetime position in the U.S. Court of Appeals for the Eleventh Circuit, the Chairman of the Judiciary Committee injected religion into a debate over qualifications for this position. By questioning Mr. Pryor's religious faith, Chairman Hatch supported a scurrilous advertising campaign designed to make those opposed to the Pryor nomination seem guilty of religious bias.

Mr. President, we urge you to immediately denounce the reprehensible behavior of the Senate Judiciary Leadership. We ask that you send a clear message to oppose religious interrogation and restore order and dignity to the judicial nomination process. Judicial nominees can be reviewed on a wide range of criteria—but religion must not be one of them. To allow questioning of religious faith during consideration of nominations will set a dangerous precedent with profound implications on future nominees.

We urge you to protect the integrity of the judicial nomination process by denouncing this behavior. As religious leaders, who take seriously our charge to promote tolerance and justice, we hope you will act swiftly on our request. We have a lot to lose. Our shared values of religious freedom are at stake.

Sincerely,

Rev. BOB EDGAR,  
*General Secretary.*

Mr. LEAHY. I see the very distinguished senior Senator from West Virginia, the most senior member of this body, on the Senate floor. I know he wishes to speak. As soon as he is prepared, I will, of course, yield the floor.

Last night we were able to move five of President Bush's judges, to get them confirmed in a matter of about 20 or 30 minutes. I thank those who worked with me to make that possible. Senator LOTT from the other side of the aisle was very helpful in moving those forward. Senator MCCONNELL was very helpful in moving those nominees forward, as well as a number of Senators on this side of the aisle. Senator HARRY REID, Senator TOM DASCHLE worked with me, along with Senator LOTT and Senator MCCONNELL, to move them. So we were able to move them, actually, in a matter of 20 or 30 minutes.

I mention that because there was a consensus on these nominees. They were not sent up here to divide us but, rather, they were the rare ones who were sent to unite us.

I mention that because we have now confirmed 145 judges for President

Bush. We stopped three. This stands in tremendous contrast to the time of President Clinton, when the Republican leadership stopped 60 of President Clinton's nominees.

For very good reasons, because of their ideology, their obvious intent to politicize the courts, we have stopped three. So we have confirmed 145 and stopped three. Those who are worried that we have politicized this, I would point out, we have stopped three. When President Clinton was there, they stopped 60, usually because one Republican, one, would object. So they were not allowed to have a hearing or vote.

I see my friend from West Virginia, and I yield the floor. I thank the Senator from West Virginia for his usual courtesy.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the distinguished Senator from Vermont.

### A PERFECT STORM

Mr. BYRD. Mr. President, the remarks I am about to make can very well be written under the title "Gathering Storm Clouds Over North Korea." Weather forecasters have a name for one of their worst nightmares of violent atmospheric disturbance, triggered by an unusual convergence of weather systems. They call it the "perfect storm."

As the United States continues to be preoccupied with quelling the postwar chaos in Iraq, I worry that the elements of a perfect storm, capable of wreaking devastating damage to international stability, are brewing elsewhere in the world. The forces at play are centered on the escalating nuclear threat from North Korea, but they also include the emergence of Iran as a nuclear contender, the violence and desperate humanitarian situation in Liberia, the near forgotten but continuing war in Afghanistan, and the unrelenting threat of international terrorism.

Just a few days ago, the Department of Homeland Security issued a chilling alert that al-Qaida operatives may be plotting suicide missions to hijack commercial aircraft in the coming weeks, possibly in the United States—a very sobering thought indeed.

Weather forecasters can do little more than watch a storm unfold. They cannot quiet the winds, as Jesus did on the Sea of Galilee, or calm the seas. We require more from the President of the United States when it comes to international crises. The President cannot afford merely to plot the course of the gathering storms over North Korea, Iran, Liberia, Afghanistan, and elsewhere. The President needs to turn his attention to these countries and work with the international community to defuse the emerging crises. The challenge is formidable and there are no easy answers. But the price of inaction could be ruinous.

Of all the looming international threats, North Korea is clearly the

most worrisome. As recently as July 14, former Defense Secretary and Korean specialist, William Perry, warned that the United States and North Korea are drifting toward war, possibly as early as this year. In an interview published in the Washington Post, Dr. Perry said:

The nuclear program now underway in North Korea poses an imminent danger of nuclear weapons being detonated in American cities.

Surely, such a stark warning from an official so deeply steeped in the political culture of North Korea should be a wake-up call to the President. Yet, to date, the administration has steadfastly refused to engage in direct talks with North Korea, or even to characterize the threat of North Korea's nuclear weapons program as a crisis. Instead, the President and his advisers have continued to hurl invectives at Kim Jong Il, while shrugging off increasingly alarming reports that North Korea is stepping up its pursuit of nuclear weapons.

Since last October, when North Korea revealed that it planned to reprocess plutonium fuel rods into fissile material that could be used in nuclear weapons, the President and his advisers have consistently downplayed the nuclear threat from North Korea, while hyping the nuclear threat from Iraq.

Yet while we have strong evidence that North Korea is working feverishly to accelerate its nuclear program, we still have not found a thread—not a thread—of evidence that Saddam Hussein's efforts to reconstitute Iraq's nuclear weapons program were anything more than bluster and hyperbole.

It is time—if it is not already too late—to drop the false bravado of indifference to the threat from North Korea and engage in face-to-face negotiations with the North Koreans. Multilateral negotiations are fine—preferable even—but they are unlikely to be productive unless the United States takes the lead. We cannot wait for the Chinese or the Japanese or the South Koreans to pave the way. We cannot brush off the nuclear threat posed by North Korea as just an annoying irritant. There is a real threat. Now there is a real threat to the United States, and the United States must act fast to neutralize it.

The news on Thursday, July 31, that North Korea has expressed a willingness to engage in six-sided talks, with the participation of Russia in addition to the other players, offers a glimmer of opportunity that the United States should seize before North Korea changes its mind. As difficult as it is to predict or understand the motivations of Kim Jong Il, one thing is certain: No progress can be made in unraveling the nuclear tangle on the Korean peninsula until the parties involved start talking to each other.

Not only must the President come to terms with the gravity of the situation in North Korea but the President must also understand that this is not a one-

man show, and that this is not the type of discussion that can be sealed with a simple handshake. You don't look into the eyes here and determine what is in the depth of the soul.

Under the Constitution, the Senate has a unique and important role to play in helping to frame the contours and the content of international treaties. Any agreement negotiated between the United States and Korea will have far-reaching implications for the national security of the United States and, as such, should be subject to the treaty advice and consent provision of article II, section 2, of the Constitution.

On a collision course with the nuclear threat from North Korea is the question of how to deal with Iran's increasingly aggressive nuclear posture. A month ago the President hinted darkly that he would not tolerate the construction of a nuclear weapon in Iran; but he has been largely silent on the issue in the ensuing weeks. When asked during a rare press conference earlier this week about the potential for war with Iran, the President placed the burden for seeking a peaceful solution squarely on the shoulders of the international community, without suggesting any role for the United States beyond "convincing others" to speak to the Iranian Government. When it comes to dealing with the threat from Iran's weapons of mass destruction, it appears that the White House is deferring to some of the same countries and institutions, including the International Atomic Energy Agency, that it dismissed as inconsequential during the runup to war with Iraq.

Like North Korea, the options for dealing with Iran are limited, but dodging engagement in favor of sporadic saber rattling is scarcely the wisest course of action. Equally unhelpful are ominous hints that the United States is contemplating covert action to precipitate regime change in Iran. Unlike North Korea, Iran has not demanded direct negotiations with the United States. Before it comes to that point, and the United States is faced with the perception of being blackmailed into negotiations, the administration should seize the initiative and not abdicate its responsibility to other nations and other institutions. Here again, the administration cannot afford to ignore the storm warnings and hope the crisis will simply blow over.

The situation in Liberia raises a different, but no less volatile, set of issues. Rent by violence and reeling from the effects of a three-way conflict between an illegitimate government and the warring rebels who want to unseat it, Liberia is desperately seeking help from the United States. The President raised expectations for U.S. intervention during his highly publicized visit to Africa earlier this month, but it has been several weeks now since his return, and still no clear policy with regard to Liberia has emerged from the White House.

The question of whether the United States should intervene in the Liberian crisis is fraught with unknowns and uncertainties. The humanitarian crisis calls out for relief. And yet the solution is elusive, and the danger of ensnaring U.S. military troops in an intractable civil war is not to be underestimated. Can the Economic Community of West African States, known as ECOWAS, raise a force sufficient to stabilize the unrest in Liberia? Could the United States help without sending in ground troops? Is the United Nations prepared to take over peacekeeping operations once the situation is stabilized? Can the United States afford to assist Liberia? Can the United States afford to ignore Liberia?

The questions are tough, but procrastination is not an acceptable response. Hundreds of innocent civilians are suffering and dying as a result of the conflict in Liberia. Monrovia is in shambles. Last week, July 25, the President took the tentative step of ordering several thousand U.S. Marines to be positioned off the coast of Liberia, but how or whether any of those troops will be deployed remains unknown. Indecisive, half-hearted gestures serve no purpose. As long as there is an expectation that the United States will intervene, African states are unlikely to take independent action to deal with the situation in Liberia. The President needs to determine a course of action, he needs to consult with Congress and the United Nations on pursuing that course, and he needs to explain his reasoning and his strategy to the American people.

In testimony before the Senate Armed Services Committee last week on July 24, GEN Peter Pace, Vice Chairman of the Joint Chiefs of Staff, termed Liberia "potentially a very dangerous situation" that poses "great personal risk" to American troops. Any decision to send American troops into that war-torn country is a decision that must be carefully thought through and be made in concert with Congress and the international community, not simply presented to the American people as an after-the-fact notification.

The situation in Liberia, and the other crises brewing around the world, require more attention and more explanation from the President than the usual off-the-cuff comments tossed to reporters at the end of photo ops. This is not a summer for the President to spend riding around the ranch in his pick up truck. This is not a time to play to the television cameras with the "bring 'em on" school of rhetoric. The problems confronting the United States require the President's serious and undivided attention. The American people deserve a full accounting from the President of where he stands on critical international issues, and how he intends to deal with them.

Against the backdrop of the war in Iraq and the emerging crises in North Korea, Iran, and Liberia, the largely

forgotten war in Afghanistan—the largely forgotten war in Afghanistan—continues to grind on and on and on more than a year and a half after the United States roused the Taliban from power and obliterated al Qaeda's terrorist training camps. Nearly 10,000 American troops remain in Afghanistan, with no end—no end—to their mission in sight—and no clear mission to accomplish—hunting the remnants of the Taliban and al-Qaida organizations. In Iraq, Saddam Hussein's sons have been killed, and one can only hope that we are closing in on Saddam Hussein himself, but in the wider war on terrorism, Osama bin Laden remains at large, and his organization continues to spread its venom throughout the Middle East and perhaps the world.

The alert issued earlier this week by the Homeland Security Department is only the latest reminder that the al-Qaida terrorist network remains a potent threat to America and its allies. The warning included specific details—such as the fact that targets might include the East Coast of the United States, the United Kingdom, Italy, or Australia and it raised the possibility that at least one of the planned hijackings or bombings could be executed before the end of the summer.

In the face of such a frightening specter, it is somewhat unsettling that on the subject of terrorism, the President is talking tough to Iran and Syria, but he seldom mentions Osama bin Laden anymore.

Is this another example of the President's efforts to change his message to divert the attention of the American people, the people who are watching through those electronic eyes above the Chair's desk? The imminent and direct threat of Iraq's weapons of mass destruction was used to hoodwink the public into accepting the rush to war, but now that no weapons have been found, the President barely mentions them anymore. Instead, he is now talking about how regime change in Iraq was really the catalyst required to stabilize the Middle East. New day, new message.

At the center of America's imperiled relations with its friends and foes alike is the Bush doctrine of preemption, which was first articulated in the September 2002 National Security Strategy. This unprecedented declaration that the United States has the right to launch preemptive military attacks against hostile nations in the absence of direct provocation sent shockwaves throughout the international community.

The doctrine of preemption was the justification for attacking Iraq without provocation, but the ramifications of the policy go far beyond that nation. All so-called "rogue regimes" were put on notice that the United States was prepared to act to deter the development of weapons of mass destruction that could be used against America.

Suddenly, the elite club of nations that formed the President's "axis of

evil" found itself caught in the cross hairs of the U.S. military. And just as quickly, the hollowness of the doctrine was exposed. Iraq could be attacked at will because it did not have nuclear capability. North Korea called for restraint because it plausibly did have nuclear capability. Iran was a question mark. Predictably, both North Korea and Iran, seeing the writing on the wall, began to scramble to accelerate their nuclear programs. In retrospect, the doctrine of preemption is beginning to look more and more like a doctrine of provocation.

Against this background, the storm clouds of international instability are massing. America's military forces are stretched thin in Iraq and Afghanistan. Our military leadership is absorbed with Iraq. Our military resources, both financial and personnel, are strained to the breaking point. With the exception of Britain, our allies are reluctant to commit significant resources or manpower to an operation in Iraq in which the United States has a stranglehold on authority and decision-making. The executive branch is preoccupied with the occupation of Iraq and seems paralyzed when it comes to meaningful action to deal with North Korea or Iran or Liberia. Afghanistan and the global war on terror have seemingly been relegated to the status of afterthoughts. America's foreign policy appears to be adrift in an increasingly tumultuous sea of international turmoil. Meanwhile, the national terror threat continues to hover uneasily in the "elevated range" amid new warnings of terrorist attacks being plotted against commercial aircraft.

In this moment of great potential peril, the President is preparing to retire for a month to his ranch in Texas. The question needs to be asked: Who's minding the White House?

In a short time, the Senate will recess for the month of August. I do not think we should go very far. I hope that the international situation will remain stable, and that no new crises will erupt. But I do not pretend to be sanguine. I do not pretend to assume that all will be well.

A rare combination of volatile and dangerous international events are poised to converge in the coming months. In large part, it is a storm of this administration's own making, fueled by the fear, confusion, and instability caused by the unprecedented and ill-advised doctrine of preemption. I only hope that the President and his advisers can summon the skill, the wit, and the leadership to engage and attempt to tame the elements of international turmoil before it is too late and we are swept up into the vortex of the storm.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ALLARD). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Members, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SEPTEMBER IN THE SENATE

Mr. FRIST. Mr. President, shortly I will make a statement addressing some of the accomplishments we have been able to achieve over the last several weeks—indeed, over the last 6 or 7 months—and, at the same time, a note to my colleagues about the future. Most are thinking about getting on airplanes and going home or around the world now or this afternoon. It is important over the August recess, from the Senate standpoint and staff standpoint, that people begin working in preparation for our return in early September.

I mentioned early this morning, most of September will be spent on the appropriations bills. We have been very successful in addressing four of those appropriations bills to date; we have nine to address in the next several weeks. After discussion with the Appropriations Committee and the leadership in the Senate and many colleagues, the first appropriations bill in September will be the Labor, HHS, and Education appropriations bill. We will start that right off the bat coming back from this recess. Under the leadership of Chairman SPECTER, we have made huge progress in this regard.

#### UNANIMOUS CONSENT AGREEMENT—H.R. 2660

Mr. FRIST. Mr. President, at this juncture, I ask unanimous consent that at 9:30 a.m. on Tuesday, September 2, the Senate proceed to the consideration of Calendar No. 197, H.R. 2660, the Labor, HHS, and Education appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I will yield to my distinguished colleague who will be managing this very important piece of legislation, someone who has worked very aggressively, very diligently in this regard and who I am confident will lead the Senate in addressing these important issues in a timely, efficient, and expeditious way upon our return.

I yield a few minutes to Chairman SPECTER.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished majority leader for his generous comments. I thank him, further, for listing the appropriations bill for Labor, Health and Human Services, and Education immediately on our return on September 2.

I have conferred with the ranking member of the Democrats, Senator HARKIN, about our plan for managing the bill, and have conferred beyond that with Senator BYRD, the ranking